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October 26, 1999

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VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room Number TWB-204  
445 12<sup>th</sup> Street, S.W.  
Washington, DC, 20554

Re: In the Matter of the Merger of Qwest Communications International,  
Inc. and U S West Inc., Docket CC-99-272

Dear Ms. Salas:

On behalf of AT&T Corp. ("AT&T"), please find enclosed an original plus four copies of AT&T's Further Comments in the above reference proceeding in response to the Public Notice issued October 19, 1999. Please direct any questions to the undersigned.

Respectfully submitted,

*Aryeh S. Friedman*  
Aryeh S. Friedman *AKW*

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Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Merger of Qwest Communications	)	Docket CC-99-272
International, Inc. and	)	
U S West Inc.	)	
	)	

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**AT&T CORP.'S FURTHER COMMENTS**

Pursuant to the Public Notice issued by the Commission on October 19, 1999, AT&T Corp. ("AT&T") respectfully submits these further comments on the Joint Application of Qwest Communications International, Inc. ("Qwest") and U S West, Inc., ("U S West") (collectively "Applicants") for authority to transfer control of U S West's licenses to Qwest.

In its initial comments, AT&T demonstrated that a merger between U S West and Qwest prior to U S West's receipt of Commission authorization to provide in-region interLATA services would violate Section 271 of the Telecommunications Act of 1996, absent implementation prior to the merger of a detailed plan that would result in the divestiture of Qwest's interLATA business within the U S West region. Although Applicants did not dispute the need for divestiture, their Joint Application provided insufficient information to enable the Commission to make an independent determination that the Section 271 issues raised by the merger would be adequately addressed, as explained by AT&T and other commentors. In response to those comments, Applicants filed and the Commission has sought comment on "The Qwest Plan for Divestiture of InterLATA Business in the U S West Region" (hereinafter the "Qwest Divestiture Plan"),

Attachment C to the Applicants' Response to Comments on Application for Transfer of Control.

The Qwest Divestiture Plan does not provide nearly enough information for the Commission to determine that the merger will not violate Section 271 of the Act. Indeed, far from eliminating the concerns that the merger will result in violations of Section 271, the so-called Divestiture Plan exacerbates them.

The Qwest Divestiture Plan is expressly premised on the assumption that Section 271 is limited to "transmission" only. In particular, Qwest claims that "none" of the "support functions" that it intends to provide "constitutes the provision of 'interLATA telecommunications' because in no case will Qwest be engaged in the transmission of information. Thus, this activity does not violate Section 271."<sup>1</sup> The Applicants similarly discuss reconfiguring its information hosting, applications and access services in terms of transmission only.<sup>2</sup>

However the Commission held in the Qwest Order that: "Congress understood the prohibition [in Section 271] to be broader in scope than mere transmission."<sup>3</sup> The Commission further held that "a BOC need not be legally or contractually responsible for furnishing interLATA services upon request in order to engage in the kind of conduct that sections [271](a) and (b) seek to prohibit."<sup>4</sup> As the Qwest Order makes clear, there are a multitude of things an RBOC could do short of actually offering "telecommunications"

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<sup>1</sup> Qwest Divestiture Plan at 11 (emphasis added); see also at 6, note 5, and 7-9.

<sup>2</sup> Id. at 15-16.

<sup>3</sup> Memorandum Opinion and Order, In the Matter of AT&T Corporation et al. v. Ameritech Corp. et al., File Nos. E-98-41, E-98-42 and E-98-43, 1998 FCC LEXIS 5192, (rel. September 28, 1998), aff'd sub nom. U S West v. FCC, 177 F.3d 1057 (D.C. Cir. 1999) ("the Qwest Order") at ¶ 34.

that would constitute "providing" interLATA service within the meaning of § 271.<sup>5</sup>

Applicants proposed Divestiture Plan makes clear that the merged firm intends to do virtually all of them.

Even after "selling" its in-region long distance business, Qwest intends to continue performing several key customer care and provisioning functions, including: "plac[ing] service orders, discuss[ing] their bills or mak[ing] payment arrangements, obtain[ing] other information about the services available, or report[ing] technical trouble with their service."<sup>6</sup> With respect to provisioning "Qwest might act as Buyer's agent to arrange local access, interface with national 800 numbering organization, physically install circuit connections to leased ports in the Qwest premise, or handle similar back-office functions."<sup>7</sup> Applicants also intend to provide to Buyers equipment that will be used in the provision of the service.<sup>8</sup>

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<sup>4</sup> Id., at ¶ 30.

<sup>5</sup> The Applicants also assert that "[d]ivestiture of all dedicated voice and data interLATA services *in the U S West service area* that cross LATA boundaries completely satisfies the requirements of Section 271." (emphasis added). Qwest Divestiture Plan at 5. Section 271 applies throughout the states in a BOC's territory, not just in their service areas.

<sup>6</sup> Id. at 8-9.

<sup>7</sup> The Qwest Divestiture Plan also provides that Qwest "has the capability to monitor circuits and make predetermined routing changes at its switch ports leased by Buyer in the event of faults (based on Buyer's advanced instructions and assuming Buyer has arranged to have alternate facilities in place. Qwest also could begin fault isolation on Buyer's behalf, effect repairs to the switch if the problem is in a Buyer-leased port; or open trouble tickets with other carriers as Buyer's agent to obtain repair activity by them." Id. at 11.

<sup>8</sup> Without knowing the terms of the lease for use of ports on Qwest's interexchange voice and data switches or the specific of the access arrangement is unclear whether or not will be "providing" interLATA services. For example, with respect to the lease of data ports, the Applicants do not make clear if all data traffic originating from a customer premises is delivered to the Buyer or if and how the access line to the customer premises may be shared and the traffic

Applicants clearly recognize the serious issues under the Qwest Order raised by their plan, but claim that they are addressed by (1) their commitment to “make it clear that long distance service” is to be provided by the Buyer of the divested assets, and (2) that the customer care and other support functions will be provided by the merged firm’s affiliate that also provides long distance service out-of-region.<sup>9</sup> But these claims do not ameliorate the Section 271 issues. In defending the conduct challenged in the Qwest Order, U S West and Qwest claimed, as they claim here, that they were likewise advising customers that the long distance service was provided by another company, but the Commission held that these measures were insufficient -- as they plainly are under the terms of the Act and the judicial decisions upon which it is based.<sup>10</sup>

Further, that these functions would be provided by the Qwest out-of-region interexchange affiliate<sup>11</sup> is in no way relevant to the Plan's compliance (or lack of compliance) with Section 271. Section 271(a) expressly provides that “[n]either a Bell operating company, nor any affiliate of a Bell operating company, may provide

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separated at the switch. First, this lack of clarity makes it impossible to determine the extent to which U S West might actually be in a position to transmit in-region interLATA traffic and what monitoring might be required if the originating port and the destination of each and every packet must be examined in order to determine compliance. Second, inasmuch as Qwest asserts that the Buyer may not be charge the transferred customers for a period of time more than charged pre-divestiture, then the Buyer may very well be vulnerable to a price squeeze if either additional access lines must be installed to the customer premises to accommodate traffic separated at the customer premises as to intra- and interLATA (a requirement that is likely to be resisted by the customer), or if in the alternative, the combined port and shared access charges for traffic is separated at the switch. Either way the potential profitability of the Buyer is negligible, and the Buyer to will have a strong incentive to sell the business back to U S West as soon as U S West obtains Section 271 approval.

<sup>9</sup> Qwest Divestiture Plan at 9-10.

<sup>10</sup> Qwest Order, ¶¶ 45-46.

interLATA services except as provided in this section." (emphasis added). Once the merger is consummated, the Qwest out-of-region interexchange affiliate will be "an affiliate of a Bell operating company." The fact that the affiliate also provides interLATA services originating out of region has no bearing on the Section 271 inquiry. If a BOC affiliate has sufficient involvement in interLATA services originating in-region to be "providing" them within the meaning of Section 271, then it is in violation of that section.

The Applicants have also not provided sufficient information for the Commission to confirm their assertion<sup>12</sup> that their arrangements with Buyers will not involve one-stop shopping. The Qwest Divestiture Plan contemplates that the interLATA shared services will be provided by a Qwest customer representative who performs the same functions for the Applicants' own monopoly local service business. Thus the Applicants might very well be perceived as providing those customers with "one stop shopping" under these circumstances.<sup>13</sup> The Applicants elsewhere assert that in transferring or assigning Qwest's in-region interLATA transmission business to another carrier they will do so only after "communicat[ing] with customers in advance of the cutover to explain the change in service provided and address any customer questions."<sup>14</sup> The Applicants, in their pre-cutover discussions with customers could readily hold themselves out as a "one-stop" provider of bundled services. The Plan also contemplates some degree of joint

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<sup>11</sup> E.g., Qwest Divestiture Plan at 6.

<sup>12</sup> Qwest Divestiture Plan at 10.

<sup>13</sup> Id., ¶39 and U S West v. FCC, supra, 177 F.3d at 1060.

<sup>14</sup> See, Qwest Communications International Inc., Divestiture Plan, A Progress Report to the Minnesota Public Utilities Commission, October 12, 1999 at 2 ("Minnesota Divestiture Plan") at 3.

marketing although its full parameters are not apparent from the Plan itself.<sup>15</sup> The Court of Appeals noted that “[t]here appears to have been specific congressional concern over the impact of jointly marketed local and long distance services.”<sup>16</sup> Again, this joint marketing, alone or in light of the other activities identified herein, may result in the Applicants holding themselves out as a “one-stop” provider of bundled services.

Finally, the Qwest Divestiture Plan utterly ignores Qwest’s provision of Internet Backbone services – the transporting and routing of packets between and among Internet Service Providers (“ISP’s”) and regional backbone networks<sup>17</sup> – and thus clearly an interLATA transmission service.<sup>18</sup> Qwest touts itself as the primary backbone provider for Internet Service Providers (“ISP’s”) including at least one headquartered within U S West’s region<sup>19</sup> and Qwest has been ranked in the trade press as a major backbone provider, almost as large as PSINet and larger than AGIS and IBM.<sup>20</sup>

In sum, the information provided by Applicants thus far is insufficient to demonstrate that the merger will comply with Section 271 of the Act. Serious questions under Section 271 remain with respect to Applicants’ plans to use or allow the use of

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<sup>15</sup> Qwest Divestiture Plan at 12-13.

<sup>16</sup> U S West v. FCC, *supra*, 177 F.3d at 1060.

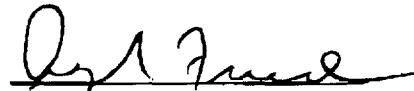
<sup>17</sup> Memorandum and Order, In the Matter of Application of WorldCom Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom Inc., CC 97-211, FCC 98-225 (rel. Sept. 14, 1998) 13 FCC Rcd. 18025 at ¶143.

<sup>18</sup> The Applicants promise only to “divest” or “reconfigure” Qwest’s web hosting, Internet applications, and Internet access services so that they will not be providing the interLATA transport component, Backbone service is neither a web hosting, application or access service.

<sup>19</sup> *Id.* slide 74. Other ISPs include Verio, Cable & Wireless and Mindspring.

<sup>20</sup> <http://boardwatch.internet.com/isp/summer99/introduction.html>, "Backbone Market Share" chart.

their brands in connection with the marketing, sale and provision of in-region interLATA services; to market or jointly market with other services in-region interLATA services; to perform other functions or services relating to in-region interLATA service; to provide data ports and other facilities for use in the provision of interLATA services; and the status and uses of Qwest's in-region Internet backbone. As such, the Commission cannot find on the current record that the merger is consistent with the public interest.



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October 26, 1999



CERTIFICATE OF SERVICE

I, Karen Kotula, do hereby certify that on this 26th day of October, 1999, a copy of the "AT&T Corp.'s Further Comments" was mailed by U.S. mail, first class delivery, postage prepaid, to the parties listed below:

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